



Patrick W. Turner
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September 30, 2010

The Honorable Jocelyn Boyd
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Joseph Wojcicki (Complainant) v. BellSouth Telecommunications, Inc. d/b/a
AT&T South Carolina (Defendant)
Docket No. 2010-328-C

Dear Ms. Boyd:

Enclosed for filing is AT&T South Carolina's Motion to Vacate Scheduling Order in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/nml
cc: All Parties of Record
852493

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN RE:	Joseph Wojcicki,)	
)	
	Complainant/Petitioner,)	Docket No. 2010-328-C
)	
	v.)	
)	
	BellSouth Telecommunications, Inc.)	
	d/b/a AT&T South Carolina,)	
)	
	Defendant/Respondent.)	
)	

MOTION TO VACATE SCHEDULING ORDER

BellSouth Telecommunications, Inc. d/b/a/ AT&T South Carolina (“AT&T South Carolina”) respectfully submits that the Public Service Commission of South Carolina is without subject matter jurisdiction to address the matters presented in this Docket, and AT&T South Carolina intends to file a Motion to Dismiss on that (and possibly other) grounds. In the meantime, and without waiving the foregoing, AT&T South Carolina respectfully requests that the Commission vacate the Scheduling Order entered in this Docket on September 22, 2010 for the reasons set forth below.

PROCEDURAL HISTORY

On September 13, 2010, the Commission posted Mr. Wojcicki’s email of September 10, 2010 on its website as a Complaint and assigned it the above-referenced docket number. On September 22, 2010, the Commission posted a Scheduling Order on its website that provides for: AT&T South Carolina to file Direct Testimony on October 12, 2010; the Complainant to file a response on October 19, 2010; and a hearing before the Hearing Examiner on October 28, 2010.

REASONS SUPPORTING AT&T SOUTH CAROLINA'S REQUEST

AT&T South Carolina understands and appreciates the benefits of a streamlined process for handling more common types of customer complaints. Accordingly, if this were a common type of customer complaint, AT&T South Carolina would have no concerns with the Scheduling Order. Among the relief sought in this Complaint, however, is a "recall" of facilities AT&T South Carolina uses to provide various services many customers.

As noted above, AT&T South Carolina plans to file a Motion to Dismiss on the grounds that the Public Service Commission lacks subject matter jurisdiction over the matters alleged in the Complaint. To demonstrate that this position has substantial legal merit and should be carefully considered by the Commission prior to taking any further action in this docket, AT&T South Carolina respectfully submits as Exhibit A to this Motion a letter of February 19, 2009 from the Office of Regulatory Staff ("ORS") to Mr. Wojcicki. The ORS's letter informs Mr. Wojcicki that the matters addressed in his complaint are outside the authority of the ORS which, of course, is limited to matters within the jurisdiction of the Commission. AT&T South Carolina reserves the right to elaborate on and present additional authority for its position beyond the authority cited in the ORS' letter, including without limitation AT&T South Carolina's subsequent election to operate under S.C. Code Ann. §58-9-576(C) effective October 1, 2009.

AT&T South Carolina, however, is concerned that the Scheduling Order may not provide sufficient time for AT&T South Carolina to submit its Motion to Dismiss and for the Commission to rule on that motion before AT&T South Carolina's pre-filed testimony is due on October 12, 2010. AT&T South Carolina, therefore, respectfully requests that the Commission

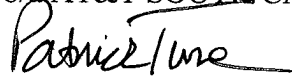
enter an order: (1) vacating the Scheduling Order; and (2) allowing AT&T South Carolina until October 13, 2010 to file its Motion to Dismiss.¹

CONCLUSION

AT&T South Carolina respectfully requests that the Commission vacate the Scheduling Order so the Commission can receive, consider, and rule on AT&T South Carolina's Motion to Dismiss (and any response the Complainant may submit) before taking any further action in this Docket.

Respectfully submitted this 30th day of September, 2010.

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T SOUTH CAROLINA



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854654

¹ This is the date a response from AT&T South Carolina typically would be due if it had been served with a Complaint on September 13, 2010. See S.C. Code Ann. §58-9-1090; Commission Rule 103-830.

EXHIBIT A

G. DUKES SCOTT
EXECUTIVE DIRECTOR

1101 Main Street, Suite 900
Columbia, SC 29201



DAN EARNETT
CHIEF OF STAFF

Phone: (803) 737-0800
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fbelser@regstaff.sc.gov

Florence P. Belser
General Counsel

February 19, 2009

VIA EMAIL AND U.S. MAIL

Mr. Joseph Wojcicki
820 East Steele Road
West Columbia, SC 29170

RE: Complaint against AT&T for installations at 800 block of East Steele Road in West Columbia

Dear Mr. Wojcicki:

This letter is a response to a complaint which you lodged against AT&T with the Office of Regulatory Staff ("ORS") and to a meeting on February 17, 2009, which you had with April Sharpe and Megan Hicks of the ORS' Consumer Services Department. Based on your Memorandum dated February 18, 2009, and sent to Ms. Sharpe, the basis of your complaint against AT&T concerns certain equipment which AT&T has installed near your property at 820 East Steele Road in West Columbia. In your facsimile transmission dated January 30, 2009, you also identified the placement of equipment near your home as the subject of that letter stating "AT&T has installed their equipment on and around my property that could create explosion / fire hazard to my home and us ... residents." You further stated that "they never ask[ed] my permission for this installation, they have even not informed us about plans of their installations."

After reviewing your facsimile transmission dated January 30, 2009, and your Memorandum dated February 18, 2009, it is my opinion that the ORS cannot provide assistance in this matter.

First, your complaint alleges improper placement of the equipment by AT&T and makes allegations of other possible violations against your property rights. The PSC has ruled in previous orders that it does not have jurisdiction over disputes involving the resolution of real property issues. For instance, in a 1992 case involving a complaint in a telecommunications matter, the PSC stated

[t]he Commission concludes that, while a telephone utility may be subject to the same basic principles of property law as any other entity, the enforcement of those property laws is not within the scope of the Commission's regulation of telephone utilities. In fact, as a creature of statute, the Commission only has authority to regulate the rates and service of telephone utilities. Order No. 92-406, pp. 2-3 (May 26, 1992) (Docket No. 92-297-C – In Re L.G. Elrod, Complainant v. Southern Bell Telephone and Telegraph Company, Respondent.)

More recently, in a water case involving an easement the Commission stated "it seems equally apparent that this Commission is not the best forum to determine issues of real property ..." Order No. 2007-753, p. 1 (October 23, 2007) (Docket No. 2007-41-W --In Re Ashley Oaks Water System, Inc. for approval of a transfer of its water system to the City of Columbia).

Secondly, it appears to the ORS Staff that the equipment that is the basis for your complaint is a "Video Ready Access Device" ("VRAD") which is used to provide video and high speed internet services. Video and high speed internet services are classified by South Carolina law as Broadband Services.

S.C. Code Ann. § 58-9-10(17) (Supp. 2007) states

(17) The term "broadband service" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of:

- (a) a capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or
- (b) any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services.

State law further provides that Broadband Services are not regulated services subject to the jurisdiction of the Public Service Commission of South Carolina ("PSC"). S.C. Code § 58-9-280(G)(1) states in part that

The [PSC] must not:

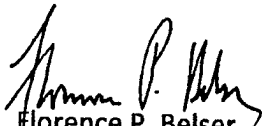
- (a) impose any requirements related to the terms, conditions, rates, or availability of broadband service; or
- (b) otherwise regulate broadband service ...

Because S. C. Code § 58-9-280(G) states that Broadband Services are not regulated by the PSC, neither the PSC nor ORS has any regulatory oversight over these services or the VRAD installation or its placement.

It is my understanding that the VRAD will be used by AT&T to primarily provide its U-Verse service. Further, it is my belief that AT&T has applied for and received a state-issued certificate of franchise authority for Lexington County from the South Carolina Secretary of State pursuant to the South Carolina Competitive Cable Services Act. As for complaints against companies which hold state-issued certificates of franchise authority, S.C. Code Ann. § 58-12-370 (Supp. 2007) provides that the South Carolina Department of Consumer Affairs is the agency to receive complaints from customers of the holder of a state-issued certificate of franchise authority.

Because we have determined that your complaint pertains (1) to real property issues which the PSC has ruled are not within its jurisdiction to adjudicate and (2) to the installation and placement of equipment which will primarily be used to provide non-regulated services by AT&T, ORS staff will not conduct an on-site visit to your premises. ORS' authority with regard to inspections and examinations of public utilities is limited to matters within the jurisdiction of the PSC. See S.C. Code Ann. § 58-4-50(A)(2) (Supp. 2007). Therefore, for the reasoning as stated above, ORS is closing its file on this complaint.

Sincerely,



Florence P. Belser

cc: April Sharpe, Manager ORS Consumer Services Department
Donna DeMichael, SC Dept. Consumer Affairs

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T”) and that she has caused the Motion to Vacate Scheduling Order in Docket No. 2010-328-C to be served upon the following on September 30, 2010:

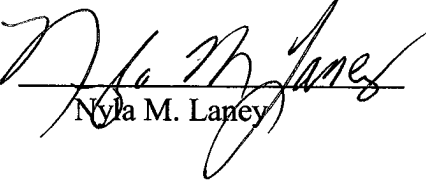
Mr. Joseph Wojcicki
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(Certified Mail & Electronic Mail)

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Nyla M. Laney

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